

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

BOARD OF HEALTH REGULATION

STATEMENT OF PURPOSE

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance-United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty-nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Lowell Board of Health to curtail the access of tobacco products by minors.

AUTHORITY

This regulation is promulgated pursuant to the authority granted to the Lowell Board of Health by Massachusetts General Laws, Chapter 111, Section 31, that "Boards of Health may make reasonable health regulations."

CITY OF LOWELL
BOARD OF HEALTH REGULATIONS
PERTAINING TO TOBACCO USE, SALE AND ADVERTISING

SECTION 1. DEFINITIONS:

For the purpose of this regulation, the following words shall have the following meanings:

<u>"Business Agent"</u>	an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.
<u>"City":</u>	The City of Lowell, Massachusetts.
<u>"Employee":</u>	Any individual who performs services for either compensation or gratis for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a de minimis amount of time.
<u>"Employer":</u>	Any individual, person, business agent, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, or other organized group of individuals, which uses the services of 1 or more employees at 1 or more workplaces, at any 1 time, including the City of Lowell, it's political subdivisions, and it's departments, or agencies thereof, which uses the services of one (1) or more employees or volunteers.
<u>"Minor"</u>	Any individual who is under the age of eighteen (18).
<u>"Permit Holder:</u>	Any person engaged in the sale or distribution of tobacco products as a wholesaler and/or as a retailer directly to consumers and is required by these regulations to apply for a Tobacco Permit for the sale of tobacco products pursuant to these regulations.
<u>"Person"</u>	Any individual, employer, employee, business agent, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.
<u>Self-Service Display:</u>	Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.
<u>"Smoking/Smoke":</u>	The inhaling, lighting, chewing, exhaling, burning, or carrying of any lighted cigar, cigarette, pipe, or tobacco in any manner or form, or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

"Tobacco Permit"

Shall refer to the Tobacco Permit: for the sale of Tobacco Products issued by the City of Lowell Health Department and are annually renewable on January 1st.

"Tobacco Products"

Cigarettes, cigars, pipe tobacco, chewing tobacco, bidis, blunts, snuff, or tobacco in any of it's forms.

"Vending Machine"

Any automated or mechanical self service device, which upon insertion of money, tokens, or any other form of payment, dispenses cigarettes or any other tobacco product manually or by remote control.

"Vending Machine Lock-Out Device":

A device that disables a vending machine from operating in a manner that allows for the continuous, unassisted dispensing of tobacco products.

SECTION 2. TOBACCO SALES TO MINORS PROHIBITED-

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor; or not being the minor's parent or legal guardian give tobacco products to a minor.
2. In conformance with and in addition to MGL, Chapter 270, section 7, a copy of Massachusetts General Laws, Chapter 270 Section 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health, and made available from the Lowell Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at, or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
3. Identification: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.
4. All retail sales of tobacco must be face to face between the seller and the buyer.

SECTION 3. TOBACCO SALES PERMIT

1. No person shall sell or otherwise distribute tobacco at retail within the City of Lowell without first obtaining a tobacco sales permit issued annually by the Lowell Board of Health.

2. The fee for a tobacco sales permit shall be determined by the Lowell Board of Health annually. All such permits shall be renewed annually by January 1. Effective upon passage of this regulation, the fee for such a permit is \$50.00 (fifty dollars).
3. A separate permit is required for each retail establishment selling tobacco.
4. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
5. As part of the tobacco sales permit application process, the applicant will be provided with the Lowell Board of Health Regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulations and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.
6. No tobacco permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco, and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws. This statement must be kept on file for inspection by City agents on demand.
7. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
8. A tobacco sales permit is non-transferable. A new owner of an establishment that sells tobacco must apply for a new tobacco sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
9. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with these regulations.

SECTION 4. FREE DISTRIBUTION:

1. No person shall distribute or cause to be distributed any free samples of tobacco products.

SECTION 5. OUT-OF-PACKAGE SALES

1. No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes.

SECTION 6. SELF SERVICE DISPLAYS

1. All self-service displays of tobacco products are prohibited. No tobacco product shall be displayed in a location from which the customer may gain access. All tobacco products shall be on or behind retail counter such that direct contact with unpurchased product by the customers is prohibited or shall be located in a locked storage area which remains locked at all times except when an employee is retrieving tobacco products. All humidors including, but not limited to, walk-in humidors must be locked. The only exception is self-service displays that are

located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present or permitted to enter at any time.

SECTION 7. TOBACCO VENDING MACHINES:

All tobacco vending machines are prohibited. The only exception is tobacco vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees. Any vending machine, which dispenses tobacco, or tobacco products therefrom, shall not also dispense any non-tobacco products from the same machine.

SECTION 8. VIOLATIONS

- 8.1 It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco. The violator shall receive:
- a. In the case of a **First violation** by a fine of \$100.00 (one hundred dollars).
 - b. In the case of a **Second violation** within 24 months of the date of the current violation a fine of \$200.00 (two hundred dollars).
 - c. In the case of a **Third violation** within 24 months of the second violation by a fine of \$300.00 (three hundred dollars).
 - d. In the case of **A Fourth violation** within 24 months from the third violation, a fine of three hundred dollars (\$300.00) and the Tobacco Sales permit shall be suspended for not less than three (3) consecutive days and not to exceed seven (7) consecutive days.
 - e. **Upon the Fifth violation** within a 24 month period from the fourth offense, in addition to the fine levied in Section 8.1c, the Board shall assess a suspension of the Tobacco Sales permit for not less than thirty (30) consecutive days and not to exceed one (1) year.
 - f. **Any subsequent violation** within 24 months of the Fifth violation, in addition to the fine levied in Section 8.1c, shall result in the violator being considered in egregious noncompliance and shall result in notice and hearing before the Board of Health for a one (1) year suspension of all permits, licenses and/or variances issued by the Board of Health. In the case of a one (1) year suspension, the establishment may not reapply for Board of Health permits/licenses/variances until one (1) calendar year has passed from the date of suspension.
- 8.2 Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales permit for thirty (30) consecutive business days.
- 8.3 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits/licenses/variances for thirty (30) consecutive business days.

- 8.4 The Lowell Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. After a hearing, the Lowell Board of Health shall suspend the tobacco sales permit if the Board finds that a sale to a minor occurred. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.
- 8.5 Fines and fees collected by the City of Lowell under these regulations shall be used for the enforcement or for educational programs on the harmful effects of tobacco.

SECTION 9. NON-CRIMINAL DISPOSITION:

- 9.1 Whoever violates any provision of these regulations may be penalized by a non-criminal disposition fine as provided in Mass General Laws, Chapter 40, Section 21D and in Section 1-16 of the Code of the City of Lowell or by filing a criminal complaint at the appropriate venue.
- 9.2 Each calendar day on which a violation occurs shall be considered a separate offense.

SECTION 10. ENFORCEMENT:

- 10.1 Enforcement of this regulation shall be by the Board of Health of Lowell or its designated agent(s), including but not limited to the Compliance Specialists in the Tobacco Control Office, Health Inspectors, Building Inspectors, Sanitary Code Inspectors and Police Officers.
- 10.2 Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of Lowell or its designated agent(s) and the Board shall investigate.

SECTION 11. SEVERABILITY

- 11.1 If any provision of these regulations shall be declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Section 12. REVOCATION

- 12.1 The Board of Health of the City of Lowell, by the enactment of these rules and regulations pertaining to tobacco use, sale, and advertising, revokes and cancels, in their entirety, the Rules and Regulations pertaining to tobacco use, sale and advertising adopted by said Lowell Board of Health on July 26, 1995, last amended March 30, 1999.

SECTION 13. EFFECTIVE DATE

This regulation shall take effect on _____, 200__.

Board of Health of the City of Lowell

A True Copy Attest

/s/ _____

Donna Cox

Secretary to Lowell Board of Health